

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

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IN RE JOHNSON & JOHNSON : TRANSCRIPT OF
POWDER PRODUCTS MARKETING, : STATUS CONFERENCE
SALES PRACTICES. : JULY 9, 2018
-----:

CLARKSON S. FISHER UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FREDA L. WOLFSON, USDJ

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BY: P. LEIGH O'DELL, ESQUIRE (ALABAMA)
-and-
LEVIN PAPANTONIO, ESQUIRES
BY: CHRISTOPHER V. TISI, ESQUIRE (FLORIDA)
On behalf of the Plaintiffs Steering Committee

DRINKER, BIDDLE & REATH, ESQUIRES
BY: SUSAN M. SHARKO, ESQUIRE (NEW JERSEY)
JULIE L. TERSIGNI, ESQUIRE (NEW JERSEY)
-and-
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BY: JOHN H. BEISNER, ESQUIRE (WASHINGTON, D.C.)
On behalf of Defendant Johnson & Johnson

* * * * *

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C E R T I F I C A T E

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

4

1 (In open court.)

3 THE DEPUTY CLERK: All rise.

4 JUDGE WOLFSON: Thank you. Everyone may be
5 seated.

I've received a number of submissions from all of you, one, the agenda which you normally send to me beforehand, and some other letters that have been sent with regard to the issue of objecting or appealing Judge Pisano's rulings with regard to the 30(b)(6) deposition questioning of the samples and destruction. So I'm going to deal with all of those things today as well.

13 Actually, let's begin with the issue of the
14 samples because it really ties together our scheduling
15 as well and the testing that's being done and what's
16 being added to the mix. So I would like to deal,
17 first, perhaps, with the issue that was addressed to
18 Judge Pisano.

In that regard, Judge Pisano had denied the request by plaintiff for a 30(b)(6) witness to testify about the maintenance of samples, destruction, loss, things of that nature, finding it was not going to be relevant to the issue of general causation. Perhaps, it would go to an issue of spoliation, but did not find that there was an issue to go that route at this

1 point anyway.

2 I received your letters, and the first
3 question, though, that I want to start with for the
4 plaintiff -- and who is going to be arguing? Is it
5 you, Ms. O'Dell?

6 MS. O'DELL: Your Honor, I'll take up the
7 testing and Mr. Tisi will take up the appeal itself.

8 JUDGE WOLFSON: I'm going to address the
9 appeal first, then we're going to talk about the
10 testing that's being done and the timing because that
11 will go to my general schedule.

12 As to the appeal, at this point having read
13 the various submissions that have been made, it
14 appears to me that I frankly see that it comes down to
15 an issue that's principally addressed to Imerys and
16 not J&J.

17 MR. TISI: No. The example that we used to
18 illustrate why we believe that that testimony is
19 testimony that we need in this case was -- the example
20 we gave was one that relates to concretely Imerys.
21 But we believe there are gaps in time in the J&J
22 production of samples as well.

23 JUDGE WOLFSON: Let me just stop for a second,
24 though.

25 Your principal argument and much of the

1 briefing and as well in your status letter and the
2 timing is dealing with the fact that you said, with
3 regard to Imerys, much of the samples that have been
4 provided had been post-2000, and now these new
5 additions include time periods for which you had not
6 had samples from Imerys, which are 1964 to 2001, 2012
7 to 2014, talking about, as you call it, the early
8 decades that were missing.

9 MR. TISI: Correct.

10 JUDGE WOLFSON: You do have samples from J&J
11 from those earlier decades.

12 MR. TISI: Well, we do have samples. But, for
13 example, Judge, in the 1990s, even though we have many
14 samples from J&J, they are pretty much clumped in
15 distinct timeframes.

16 For example, in the 1990s, we have a total of
17 three samples in that entire decade. In the 2000s, we
18 have two samples in that entire decade. And so it's
19 hard for us to believe, just as it was hard for us to
20 believe with respect to Imerys, that you have a
21 20-year period of time where you only have five
22 samples.

23 THE COURT: Have you asked that in written
24 discovery?

25 MR. TISI: Yes, we have, your Honor.

1 JUDGE WOLFSON: Okay. And what's been the
2 response?

3 MR. TISI: The response was -- well, the
4 response from J&J is the same one we got from Imerys.

5 JUDGE WOLFSON: I want to focus on J&J for the
6 moment and then I'll get to Imerys.

7 MR. TISI: The J&J response was, they put
8 together a spreadsheet and the spreadsheets were
9 attached to the orders that were filed, I believe, in
10 early February, and there has been no supplemental --
11 as with Imerys there has been no supplemental findings
12 of additional samples.

13 However, we recently sent J&J some
14 correspondence that we were able to pull from the
15 document production where we believe that not only are
16 there samples -- for example, I think it was 1989, in
17 this timeframe that I'm talking about here where there
18 are only five samples for two decades, there were
19 something like in the neighborhood of 20 samples from
20 J&J where we see no test results. The samples have
21 not been produced.

22 And so we asked them to do an investigation
23 which they indicated that they would be doing. We
24 didn't raise that with your Honor because it's not
25 ripe yet because we think it's only fair that they

1 have the opportunity to do that investigation.

2 However, just as there was with Imerys, we
3 think that there is reason to believe that there are
4 additional samples out there, and we believe putting a
5 witness under oath will cause them to either come up
6 with additional samples or say: We've done a complete
7 search, this is what it was, and this is why we don't
8 think that there are any.

9 JUDGE WOLFSON: Are we focusing solely on the
10 time period from 1990 to 2010 with regard to J&J?

11 MR. TISI: Well, that's the biggest period of
12 time.

13 JUDGE WOLFSON: Okay. Let me focus on that.
14 Maybe I can deal with that.

15 Ms. Sharko, if we focus on that 20-year
16 period, is that something you can deal with?

17 MS. SHARKO: So this is really the first time
18 I'm hearing this.

19 JUDGE WOLFSON: Well, isn't that appropriate
20 we have a hearing today, isn't it?

21 MS. SHARKO: Yes.

22 We produced a spreadsheet of over 1,000
23 samples. That was the last we heard there were any
24 issues with it until recently, I would say, within the
25 last week to ten days, whenever it was, Mr. Tisi sent

1 a letter saying: Look at this document. I have these
2 questions about it. And we said: Thank you. We'll
3 look into it, and we are.

4 So I don't think that alone in and of itself
5 is grounds to overturn Judge Pisano's decision as to
6 samples from 1990 to 2010. First of all, I don't see
7 the relevancy of that given the latency period and the
8 dates of diagnoses in all these women.

9 JUDGE WOLFSON: The latency period is what, 20
10 to 30 years?

11 MR. TISI: Correct, your Honor.

12 JUDGE WOLFSON: So something from 1990 could
13 certainly fit within that.

14 MR. TISI: Many of these women, for example,
15 women who were diagnosed earlier, they have been
16 taking these for 20, 30, 40 years of their lives. So
17 the timeframe goes back significantly for all of
18 these.

19 JUDGE WOLFSON: I understand the 2000 to 2010
20 may not be as great except that, I guess, the question
21 is: Is it cumulative at some point?

22 Okay. I just want to ask you, Ms. Sharko, at
23 this point what I don't want to do is create
24 situations where I might have a limited discovery that
25 could be permitted and have some issue down the line

1 that you didn't investigate this properly. If I focus
2 only on that 20-year period, whether it's through an
3 under-oath declaration -- it doesn't have to be a
4 deposition from my perspective -- can we deal with
5 that?

6 MS. SHARKO: So now that I've heard that Mr.
7 Tisi and the plaintiffs are concerned about this
8 discrete time period and the number of samples, why
9 don't I take that question back and see what the
10 answer is and send a letter to him or a supplemental
11 letter or a statement under oath --

12 JUDGE WOLFSON: I want it to be a declaration.
13 The reason they want a deposition is they want
14 something under oath. If the answers are fairly
15 simple, a declaration under only is sufficient for me
16 and you don't have to have someone prepare on a
17 30(b)(6) a different witness for that.

18 A declaration, that's what I'll direct you to
19 do.

20 MS. SHARKO: Okay. Thank you.

21 JUDGE WOLFSON: All right. We resolved J&J.
22 Now, let me talk about Imerys.

23 What else do you want to say, Mr. Tisi, beyond
24 what's in your papers? I do understand the three
25 different areas of new discovery that have come about,

1 what you call the Lanzo area, there is the Lanzo box,
2 the Vermont mine, and some, I guess, grade 25 talc,
3 whatever , those three different groupings.

4 MR. TISI: I do want to make two points that I
5 don't think are as clear as I would like them to be.

6 No. 1, we found out about these additional
7 boxes and materials as a result of putting somebody
8 under oath. Now, it wasn't the PSC putting somebody
9 under oath. It was somebody appearing at a trial,
10 being examined, and that information came out.

11 JUDGE WOLFSON: Well, actually, you didn't do
12 it. You've indicated you were not involved.

13 MR. TISI: We were not involved in that.
14 Because somebody was under oath, somebody was in a
15 witness box, they were asked questions, that we
16 learned about this, or we probably would have gone
17 through this entire process without learning about it.
18 So that's why we believe that it's important to have
19 somebody under oath to ask those questions.

20 No. 2, I did most of the negotiating, Ms.
21 O'Dell and I, with both Imerys and J&J. In dealing
22 with Imerys, it's been very collaborative. But up
23 until the time in which we actually finalized the
24 30(b)(6) notices, Imerys was willing to put somebody
25 in the box to testify on the issue of what we call

1 lost and destroyed samples.

2 It was only when Judge Pisano came down with
3 his order on the 23rd that we got a call from Mr.
4 Silver saying: By the way, we are not going to put
5 somebody under oath because Judge Pisano ruled how he
6 ruled and we don't think we have to produce somebody
7 in the same way Johnson & Johnson doesn't have to
8 produce somebody.

9 And so those two points, I think, are
10 important to recall.

11 We have been trying to get an inventory of
12 samples from both J&J and Imerys since September,
13 since this issue was first raised with your Honor back
14 in August of last year with respect to preserving all
15 of these samples for the purpose of this litigation
16 and the asbestos litigation.

17 I think it's fair to say, and Ms. O'Dell will
18 go through this, what we've done, but we have been
19 very aggressive in trying to get our arms around an
20 inventory that is both representative in terms of
21 timeframes, in terms of the mines involved, so that we
22 can have as broad an expert report that encompasses a
23 fair representation of what's out there. We have to
24 rely on them to provide it to us.

25 And so we believe that putting somebody under

1 oath, just as Ms. Pierre was under oath in the Lanzo
2 trial, putting somebody under oath in this MDL will
3 allow us to assure ourselves that whatever is out
4 there, reasonably out there, that we are able to
5 identify.

6 Unless Ms. O'Dell wanted to add anything more
7 to that, I hope I've answered that question that you
8 had.

9 JUDGE WOLFSON: I think Mr. Silver wants to
10 respond.

11 MR. SILVER: Judge, Mr. Tisi's representation
12 wasn't exactly accurate. I agree it was
13 collaborative. After that Imerys' position has always
14 been, if J&J is taking something to Judge Pisano, we
15 are not going to double the paperload and the workload
16 on Judge Pisano. We join in on what they are saying
17 and his rulings will apply both equally to J&J and to
18 Imerys.

19 But could we back up for a second?

20 JUDGE WOLFSON: But normally what you did do,
21 and I know with me is, you at least sent a letter
22 saying: We join in that. And I think it's a good
23 practice in the future for any disputes you have, that
24 if you have feel you are taking the same position as
25 J&J, that you put that in a letter to say that you

1 are.

2 MR. SILVER: Fair enough, your Honor.

3 But could we just back up for one second?

4 JUDGE WOLFSON: Yes.

5 MR. SILVER: Nothing in what the PSC has said
6 so far today uses the words science, general causation
7 or Daubert. Do we need all these samples, for
8 whatever reason, because we want to get an inventory,
9 or we want to have some gotcha moment on spoliation
10 down the line or --

11 JUDGE WOLFSON: No, I don't think it's
12 spoliation. This is how I'm hearing it. You can
13 ascribe to them whatever motivation you think is
14 there. But what I want to talk about: Does it have
15 relevance to what we are doing?

16 I do think it is appropriate to know that we
17 have the universe of samples out there and that they
18 are representative samples. And so that has been the
19 objective from the beginning, which is why everybody
20 went back to do their searches and exhaustive searches
21 hopefully.

22 I know J&J is producing some museums and we
23 had to go through all of that, things in other
24 countries, and I guess the concern is at this point
25 because there have been these three more recent

1 discoveries, and maybe now you do have the universe,
2 that that's what they were entitled to for purposes of
3 then determining what sampling they wanted to do.
4 That remains the purpose.

5 So the question is at this point -- and I'll
6 give the same option to you. But yours is broader.
7 It's not limited to two decades. I need something
8 under oath that's going to say that you have
9 investigated, explored, whatever, all of the possible
10 sources that could have samples, and you'll either
11 come up with more, or you'll say: Now, this is it.
12 We are representing to you that this is it.

13 I want that under oath and you could do it
14 through a declaration.

15 MR. SILVER: Yes, your Honor.

16 JUDGE WOLFSON: And if in your discovery you
17 find that there were samples, but that they no longer
18 exist or are destroyed, then explain that, when the
19 destruction occurred.

20 If you had samples from the '50s and they were
21 destroyed in the '50s because you had a two-year
22 destruction policy, or whatever, fine. I'm sure what
23 they want to make sure is, you didn't have samples
24 from the '50s there were destroyed three years ago
25 when the litigation commenced.

1 MR. SILVER: Judge, again, just for the
2 record, Imerys started in 1989, and that may be part
3 of what the issue is.

4 JUDGE WOLFSON: I know there were prior
5 companies.

6 MR. SILVER: Right. And the Lanzo box is an
7 example that had samples that went farther back. But
8 Imerys is a company that only existed as of 1989. But
9 I understand what your Honor is looking for and we
10 will go back and --

11 JUDGE WOLFSON: And do the declaration.

12 Now, let me ask both sides. For J&J, because
13 you do have a circumscribed time period, how quickly
14 can you get your declaration?

15 MS. SHARKO: I would say given that it's
16 summer a couple of weeks.

17 JUDGE WOLFSON: Okay. Two weeks.

18 MS. SHARKO: Could we have three and we'll try
19 to do it faster, please?

20 MR. SILVER: I was going to ask for 30 days,
21 your Honor, because I want to make sure it's thorough
22 and complete.

23 MS. SHARKO: I'll take 30 days.

24 THE COURT: I'm sure when Ms. O'Dell gets up
25 in a moment to talk about her samples she'll say:

1 Look how generous we were to the defendants giving
2 them 30 days to respond, they should be a little more
3 generous.

4 Okay. 30 days for both J&J and for Imerys to
5 submit their written declarations.

6 So to that extent, I am modifying what Judge
7 Pisano did in this matter. But if the declarations
8 result in more questions, then I'll deal with whether
9 a follow-up should be done.

10 Frankly, at this point, because they are going
11 to be under oath and they have to represent that they
12 have searched all possible avenues to find these
13 samples, and will indicate whether in that
14 investigation if they determine that there were --
15 excuse me.

16 (Pause.)

17 I do want to note in the declarations, though,
18 if you determine there had been samples that were in
19 existence that were destroyed, whether it was done as
20 a result of a regular destruction policy that was in
21 place, and what that was or when, if you can come up
22 with that information.

23 MR. TISI: Your Honor, could I ask a question
24 as well?

25 JUDGE WOLFSON: Yes.

1 MR. TISI: If they learn in this 30-day period
2 that there are additional samples out there, and one
3 of these that Ms. O'Dell is going to be talking about
4 is our process for trying to get through this, if they
5 would let us know and make those available.

6 Part of the problem is, for example, even with
7 the three groups of boxes that we have, we don't have
8 access to those until mid to late July. So we want to
9 be as proactive as possible. So if there are some
10 that are found, that they would bring them in-house
11 and let us know so that we can start the process of
12 selecting and dividing them. That would be really
13 useful.

14 JUDGE WOLFSON: I understand. You are asking
15 for really a rolling submission.

16 MR. TISI: Well, the final declaration is
17 30 days. I think that's fine. But if you do learn
18 something, because what we don't want to do is get the
19 declaration, let's say --

20 JUDGE WOLFSON: I got it. I think it's what I
21 just said. If, as they are doing this, they come up
22 in a week from now and say, We found more samples, you
23 want them to start making them available.

24 MR. TISI: Yes.

25 JUDGE WOLFSON: I got it. That's what I said.

1 MR. TISI: Thank you.

2 JUDGE WOLFSON: You all have that, those
3 marching orders. And it's in your interest to do so
4 because we want to get the sampling testing done.

5 MS. SHARKO: Right. We have no interest in
6 delaying anything.

7 JUDGE WOLFSON: I know because guess what, Ms.
8 Sharko? Today I'm giving you a date for experts in a
9 Daubert hearing.

10 MS. SHARKO: All right. Thank you.

11 JUDGE WOLFSON: It's a very exciting day for
12 you, I know.

13 Now, let's turn to that, the timing on the
14 testing.

15 Ms. O'Dell, I think you are going to address
16 that. Right?

17 MS. O'DELL: Yes.

18 JUDGE WOLFSON: I want to ask you a couple of
19 questions before you begin on the information that you
20 provided to me.

21 First of all, I understand that you say there
22 is only this one Transmission Electron Microscope,
23 that you call the TEM machine, this million-dollar
24 machine, so the machine can only do a sample at a
25 time?

1 MS. O'DELL: That's right, your Honor. There
2 is one technician. There is one machine. That would
3 be typical of labs across the country. Typically,
4 they would not have more than one TEM machine. I'm
5 not aware of a lab that does. And there's one person
6 reviewing that particular sample, and it takes a good
7 number of hours. I think it's 6 to 12 hours per
8 sample depending on what they find. And if they find
9 fibers, there is additional time that's required to
10 adequately document the location of that asbestos
11 fiber.

12 So that's the issue we are dealing with in
13 terms of --

14 JUDGE WOLFSON: Let's look at your list. Look
15 at page 8 of your letter that was filed on July 7th.
16 This is where you give me the breakdown of all the
17 timing for testing.

18 MS. O'DELL: Yes, ma'am.

19 JUDGE WOLFSON: So the first one, "log-in
20 procedure," tell me what takes 2 hours per sample to
21 log something in.

22 MS. O'DELL: Well, my general understanding is
23 they photograph the sample. They log it into their
24 procedure. They begin to prepare it for TEM analysis.

25 JUDGE WOLFSON: Well, that's the next one,

1 "sample preparation: 7 hours per sample."

2 "Log-in," it doesn't make sense to me it's "2
3 hours." I'm not buying it. But that's not my biggest
4 number. I'm just going to tell you, I think
5 everything is being overestimated here.

6 "Sample preparation," I don't know what they
7 do to prepare it, what that means.

8 And then it's, "TEM grid preparation and
9 laboratory blanks." That's "5 hours." The other was
10 "7 hours."

11 I'm not sure what's happening in each of these
12 stages, what's different in each of these stages,
13 because it's a lot of time.

14 MS. O'DELL: It is, your Honor. I'm happy to
15 go through with a description I've been given of
16 what's done during each of these stages.

17 JUDGE WOLFSON: Okay.

18 MS. O'DELL: Maybe this is helpful, as I go
19 into this, is these early steps, until they get to the
20 TEM analysis itself, are steps that can be done by
21 multiple technicians.

22 So multiple samples are moving through those
23 steps. It's when it gets to TEM analysis itself that
24 it really slows down to one person.

25 JUDGE WOLFSON: When you say "it slows down to

1 one person," it could be a different person, though.

2 Correct?

3 MS. O'DELL: Correct. That's right. Multiple
4 technicians can do that within the lab. It's just one
5 machine.

6 So there is a concentration process of the
7 sample itself when it gets to the preparation. They
8 take the larger sample. Of course, it's weighed.
9 Approximately 1-to-2 grams is removed from the
10 container.

11 It's then placed into a vial. The vial is
12 then put into something. I don't know what it
13 is, your Honor, but I can read it. That's Fisher
14 Scientific Iso-temp muffle furnace Model so-and-so for
15 4 hours to remove the organic material.

16 Approximately 25 milligrams is removed from
17 the muffled talc sample aliquot, then placed into a
18 labeled Eppendorf micro-centrifuge tube.

19 Approximately 1.2 milliliters of heavy liquid
20 is then placed in that tube in order to concentrate it
21 down to the sample that's ultimately tested for TEM.

22 I can go through all of these steps, your
23 Honor.

24 JUDGE WOLFSON: You'll make Vinnie crazy.

25 I'm trying to just get an idea of what each of

1 these steps really means, because then you have the
2 "TEM grid preparation and laboratory blanks," which is
3 another "5 hours."

4 MS. O'DELL: Do you want me to go through
5 that?

6 JUDGE WOLFSON: Just generally.

7 MS. O'DELL: I want to be accurate. A lot of
8 this is quite complex.

9 So the filtered sample is then prepared on a
10 TEM 100 micrometer grid using this filter preparation
11 protocol. It uses like a washing, and then it's put
12 on a 7 micrometer filter, and then it's placed on the
13 grid, which I understand is 7 micrometers. This is a
14 very delicate process and they say it takes 1.5 hours
15 generally to do that.

16 So, Your Honor, I understand the focus on
17 time. Are we accurately estimating the time? I can
18 go through all these stages. This is from Dr. Longo.
19 These are the specific steps they go through for the
20 procedure. There has been no effort to embellish
21 them, make them longer.

22 JUDGE WOLFSON: I must say, though, reading
23 this, the "TEM analysis," is "6 to 12 hours."

24 Then it says, "review of data, 2.5 hours per
25 sample," though it sounds like the TEM analysis was

1 already reviewing it.

2 And then "review of data" again "and
3 preparation of written report" is another "4 hours."

4 I really think there is some overlap here.
5 I'll put that aside, but I'm just telling you I think
6 there is some -- I won't call it fluff, but I do think
7 that there is too much time that may be duplicative
8 time that's being given to me. I understand
9 nonetheless it is time-consuming in some way.

10 So from what I understand, you have 58 new
11 samples that you've gotten from Imerys?

12 MS. O'DELL: We've actually gotten a total of
13 216.

14 JUDGE WOLFSON: Right. You picked out 58.

15 MS. O'DELL: We've selected 58. The reason
16 those samples are important -- if you would like me to
17 speak to that.

18 JUDGE WOLFSON: No, that's okay. I'll trust
19 the fact that you've selected ones that you think are
20 important.

21 My understanding is, you are also still going
22 through with Dr. Longo reviewing the ones you had
23 previously selected and that you think there are about
24 15 of those that you will not be proceeding with and
25 taking out of the original selection and cutting back

1 some. So if you take that off of the 58 that's 43.

2 There is clearly more and we don't know if
3 anything that's going to be coming up with the
4 declarations is going to reveal more samples or not, I
5 understand that, and whether any of that you would
6 feel important to testing what's representative or
7 what's not.

8 So I appreciate that it's not going to be
9 August 15th, and you knew that coming in here that
10 wasn't going to be the date to complete. You are
11 hoping for September 15th. I also know it's going to
12 be 30 days until you reveal whether there are any
13 additional samples, too.

14 So you've asked for October 15th. It's going
15 to be September 30th for you to complete your testing.
16 The 30th is a Sunday. So it will be October 1st for
17 the testing. I think on some of this, quote,
18 reporting analysis they can do better on the timing.

19 MS. O'DELL: We'll do our best to get the
20 testing accomplished, your Honor.

21 JUDGE WOLFSON: Okay. And especially,
22 frankly, the agreement we had is your expert report
23 would be 45 days later, which brings you out to
24 November 15th. My view is, regardless, your expert is
25 going to start looking at this.

1 So even if there was perhaps some stragglers
2 in the testing, reporting some of them the first week
3 in October, whatever, you could always get that and
4 add to it. I hear you.

5 So I'll make it November 16th, which is a
6 Friday, for your expert report.

7 You can have a seat, Ms. O'Dell, unless there
8 is something else. You look concerned. Is there
9 something you wanted to add?

10 MS. O'DELL: Thank you, your Honor. No,
11 that's it.

12 JUDGE WOLFSON: Okay.

13 Now, Ms. Sharko, Daubert. Do you anticipate
14 that you are going to want to depose their expert
15 prior to a Daubert hearing?

16 MS. SHARKO: Yes.

17 JUDGE WOLFSON: How much time after receiving
18 the report would you want to have that deposition
19 done?

20 Mr. Silver, I'm going to assume you are going
21 to piggyback on Ms. Sharko on this one.

22 MR. SILVER: Yes, your Honor. Thank you.

23 JUDGE WOLFSON: Okay.

24 MS. SHARKO: I suggest that their experts be
25 produced for a deposition over a 30-day period.

1 JUDGE WOLFSON: That's fine.

2 MS. SHARKO: And then our expert report at the
3 end of that 30 days be due 45 to 60 days.

4 JUDGE WOLFSON: Let's do this one at a time.

5 MS. SHARKO: Okay.

6 JUDGE WOLFSON: So their report is the 16th of
7 November. 30 days would be December 17th, which is a
8 Monday. So it's to be done by then.

9 You want your reports when?

10 MS. SHARKO: Given the December holidays, I
11 would say 60 days. Something like that. Early
12 February.

13 MR. SILVER: Judge, can I just make one
14 suggestion?

15 JUDGE WOLFSON: Yes.

16 MR. SILVER: You gave 30 days from
17 November 16th. But the Thanksgiving holidays are in
18 there and we are losing at least three days out of
19 that 30. Can we have the extra week?

20 JUDGE WOLFSON: That's up to you. You are the
21 ones that want to take it and move. Right?

22 MS. SHARKO: Yes. We'll deal with it.

23 JUDGE WOLFSON: That's what I assumed. It's
24 really just finding the day that works.

25 MS. SHARKO: Exactly.

1 JUDGE WOLFSON: Ms. Sharko wants to forge
2 ahead.

3 December 17th. So now you are looking at,
4 what, you are asking for 60 days, February 15th?

5 MS. SHARKO: Yes.

6 JUDGE WOLFSON: When are you going to file
7 your motion?

8 MS. O'DELL: Your Honor, we would like the
9 opportunity to depose their experts as well.

10 JUDGE WOLFSON: So we'll do the same 30-day
11 period for you. So now we're into March 18th.
12 February only has 28 days. March 18th.

13 MS. SHARKO: Motions filed by March 25th?

14 MS. O'DELL: No, your Honor. We will have
15 just finished depositions on the 15th. So we would
16 ask for at least 30 days after the conclusion of those
17 defense depositions for there to be motions filed.

18 JUDGE WOLFSON: That's because Ms. Sharko is
19 anticipating she's the only one who is going to be
20 filing Daubert motions, but I guess that's not going
21 to be the case.

22 MS. O'DELL: No, your Honor.

23 JUDGE WOLFSON: So I'm looking at April 18th
24 for the filing of Daubert motions. That's a long way
25 off.

1 Opposition, how long are you going to want to
2 oppose each other motions?

3 MS. SHARKO: Two weeks?

4 MS. O'DELL: That's fine, your Honor.

5 JUDGE WOLFSON: I'm fine with that. April
6 18th. Two weeks later would be May 2nd.

7 Any reply, a week later?

8 MS. SHARKO: Yes.

9 MS. O'DELL: That's fine, your Honor.

10 JUDGE WOLFSON: So that's May 9th.

11 And your hearing in June?

12 MS. SHARKO: May or June. Thank you.

13 JUDGE WOLFSON: I think I'll say June because
14 I'm going to have to read all your papers and be ready
15 for you.

16 Just a moment. I have a conference the early
17 part of June in D.C. I have to look up the dates.

18 I'll give you a date in a moment.

19 (Pause.)

20 THE COURT: I'm in D.C. from the 5th through
21 the 7th. So let's do it the following week.
22 June 11th at 10:00 a.m..

23 We also have to decide if you are producing
24 the witnesses that day because it may not be a one-day
25 hearing then.

1 The other question is, as we built into the
2 time period here the depositions, and normally I do
3 require depositions of experts before holding a
4 Daubert hearing, but if the witnesses are going to be
5 produced at the Daubert hearing, do you really want
6 the deps anyway?

7 MS. SHARKO: Yes.

8 MS. O'DELL: Yes, your Honor.

9 THE COURT: All right. That's fine.

10 June 11th at 10:00 a.m..

11 Let's go through the rest of the agenda now.

12 I understand that you do have one issue you
13 are still addressing, at least one with Judge Pisano,
14 on the foreign regulatory bodies, and plaintiffs asked
15 for those communications and discovery on that to be
16 able to respond to the submission from the defendants.

17 You have until Thursday to respond?

18 MS. O'DELL: Yes, your Honor. That's correct.

19 Your Honor, may I go back just for a second on
20 the schedule you mentioned?

21 JUDGE WOLFSON: Now, that we have it all in
22 place?

23 MS. O'DELL: I just want to put something on
24 the record.

25 Thinking about the number of experts that will

1 be necessary to depose in a 30-day period after our
2 disclosure, that's going to be a very tall task.

3 JUDGE WOLFSON: Let's talk about what experts
4 you are contemplating then and how many because we
5 hadn't really addressed that.

6 Go ahead.

7 MS. O'DELL: Your Honor, we are very much in
8 keeping with the initial disclosure that we gave to
9 you in terms of epidemiologists, regulatory experts,
10 cell biologists, there will be geologists,
11 toxicologists, GYN oncologists, pathologists.

12 JUDGE WOLFSON: Let me ask you this question,
13 though, Ms. O'Dell: A number of the ones that you are
14 introducing, how many of these are dependent upon the
15 testing? Some of them are not.

16 MS. O'DELL: I think that the epidemiologist
17 would not be as dependent on the testing.

18 But certainly the GYN oncologist, that data
19 would be relevant to them.

20 The toxicologist would be enormously relevant.

21 The pathologist would be relevant.

22 And then of course we've got some testing
23 experts themselves, not only the TEM with Dr. Longo --

24 JUDGE WOLFSON: How about your regulatory
25 expert?

1 MS. O'DELL: I think it would be less
2 relevant. But there were representations made by
3 Johnson & Johnson to the Food & Drug Administration
4 about their products being asbestos-free.

5 We clearly think that was not the case. And
6 so there will need to have some data upon which to
7 consider for the purposes of evaluating those
8 representations.

9 JUDGE WOLFSON: I know you are giving me a
10 long list of experts. I'm also not sure how many of
11 those the defendants are going to be challenging in a
12 Daubert hearing that you want depositions of. But if
13 you do want all of them, it may be very ambitious to
14 do it in 30 days.

15 Ms. Sharko.

16 MS. SHARKO: Well, I'm not sure how the
17 regulatory person is relevant to the Daubert general
18 causation issues. But putting that aside, Ms. O'Dell
19 has identified eight areas. So that's eight experts.
20 We have 30 days.

21 I think all counsel need to work together to
22 get it done and plaintiffs should be giving us
23 deposition dates as soon as possible, even before they
24 identify or serve the expert reports. We can block
25 out that time and tell the people who are going to be

1 taking the depositions they need to be available and
2 be flexible and we will do the same for them.

3 MS. O'DELL: Your Honor, we certainly will
4 endeavor to, one, cooperate; two, to organize the
5 depositions as expeditiously as possible. But to
6 suggest that because there are eight areas we are only
7 going to have eight experts, that's not true. We gave
8 a list of experts. It won't be all of those.

9 JUDGE WOLFSON: I think you had 30 experts or
10 more.

11 MS. O'DELL: Some were added and some were
12 taken away. But there are going to be a number of
13 experts disclosed. In certain instances there are
14 going to be multiple experts from a certain
15 discipline, not to be cumulative, but because we
16 represent more than -- I don't know what the number
17 is, 8300, maybe 7800 plaintiffs and this is going to
18 be an ongoing litigation.

19 So there are needs to have multiple experts
20 particularly as we anticipate multiple trials in the
21 future. So to say there are only going to be eight
22 experts, that's not an accurate depiction. There are
23 going to be many experts.

24 Your Honor, we will do everything we can to
25 get it done in 30 days. I was just thinking of how

1 many depositions we are talking about. We're talking
2 about multiple depositions for each day.

3 Let me put it this way: More than 30 experts,
4 30 days, you are talking about a lot of depositions
5 that have to take place in a short period of time.

6 MS. SHARKO: Maybe we need limits on the
7 number of experts. We are not identifying experts to
8 staff potential trials on into the future. We are
9 identifying experts sufficient for your Honor to rule
10 on the general causation issues in the case. I don't
11 think we need 30 experts per side to do that.

12 JUDGE WOLFSON: Well, I hope it's not going to
13 be 30.

14 Look, this is the schedule I want to keep.
15 We'll be meeting every month anyway over the next few
16 months as we identify them. I think it will be a good
17 idea, though, to start blocking out days in that
18 30-day period for depositions.

19 I'll deal with the issue of whether they are
20 cumulative, whether they are necessary for general
21 causation, or if you want to simply hone in on certain
22 ones for the Daubert hearing at this time reserving a
23 right on others. We can also do it that way.

24 MS. O'DELL: Okay. Thank you, your Honor.

25 JUDGE WOLFSON: Now, this issue of third-party

1 witnesses in depositions, that's still an open issue,
2 I take it?

3 MR. TISI: Yes, your Honor. We have served
4 some. We are getting dates with others.

5 There may be an issue we have to bring to
6 Judge Pisano with a witness who rejected service and
7 locked our process server out until he took the
8 service back, but we'll deal with that with Judge
9 Pisano expeditiously.

10 Thank you.

11 JUDGE WOLFSON: Thank you.

12 Yes, Ms. Sharko.

13 MS. SHARKO: Could we just please be kept in
14 the loop on scheduling? We heard nothing about
15 service or scheduling or any service of process
16 issues.

17 MR. TISI: Of course.

18 Your Honor, as we've told Ms. Sharko on
19 numerous occasions, we'll certainly keep them in the
20 loop. We couldn't schedule a deposition without their
21 input anyway. So we will definitely do that.

22 JUDGE WOLFSON: Thank you.

23 I think the next area is motions. I guess
24 what you've got is, there are a number of ones that
25 you've agreed on where there are dismissals without

1 prejudice. You have given me that list.

2 One question: Are all the pending dismissal
3 motions that have been filed by individual plaintiffs,
4 have they now been resolved or agreed upon by between
5 the parties?

6 MS. O'DELL: I'm only aware of those that are
7 on the chart that was included in the status report in
8 the proposed order, your Honor. I'm not aware of
9 others. I don't know if Ms. Tersigni is.

10 MS. TERSIGNI: Your Honor, we are not aware of
11 any others other than what's on the chart.

12 JUDGE WOLFSON: You are not aware of any
13 others at this point?

14 MS. TERSIGNI: Correct.

15 JUDGE WOLFSON: Are there any issues then with
16 regard to them? Are there other ones that you think
17 will be coming up that there are issues on?

18 MS. O'DELL: No, your Honor, not from us on
19 the Rule 41 dismissals.

20 JUDGE WOLFSON: Now, I guess the next question
21 is with regard to the remand motions, but that's the
22 Miller firm who is not here today. Correct?

23 Oh, someone is here. Could you come forward.

24 MR. HOKE: Your Honor, Curtis Hoke from The
25 Miller Firm.

1 JUDGE WOLFSON: So what's the status of these?

2 MR. HOKE: I believe, your Honor, that they
3 had been briefed. I was under the impression that
4 they were fully briefed at this time.

5 MR. SILVER: Your Honor, I can shed a little
6 light. The Miller Firm and my office had a conference
7 with your law clerk. There was ordered supplemental
8 briefing.

9 JUDGE WOLFSON: This is on the conspiracy
10 theory. Correct?

11 MR. SILVER: Yes.

12 JUDGE WOLFSON: That's still in the midst of
13 being briefed, isn't it?

14 MR. SILVER: Yes.

15 JUDGE WOLFSON: That's not complete.

16 MR. SILVER: Imerys has submitted its brief,
17 and I believe The Miller Firm's date is -- if it's not
18 this Friday, it's the following Friday that their
19 supplemental briefing is due.

20 JUDGE WOLFSON: And then that's it.

21 MR. SILVER: And then the briefing will be
22 concluded.

23 JUDGE WOLFSON: I think on the conspiracy
24 theory was it only Illinois and Rhode Island?

25 MR. SILVER: Yes.

1 THE COURT: So you will complete it this week.

2 MR. HOKE: Yes. I'm sorry for that. Yes.

3 JUDGE WOLFSON: All right. Thank you.

4 MR. HOKE: Thank you.

5 JUDGE WOLFSON: Now, defendants have raised an
6 issue with regard to amended complaints being filed
7 without consent.

8 Ms. O'Dell.

9 MS. O'DELL: Your Honor, the information that
10 was placed in the agenda hopefully communicates to
11 counsel that they should file a motion to amend in the
12 normal course. We certainly communicated that to
13 counsel. I think that at this point we've done all we
14 can to sort of ensure people comply with the rules on
15 that, that issue.

16 JUDGE WOLFSON: Ms. Tersigni.

17 MS. TERSIGNI: Your Honor, we are putting a
18 proposal together with the consent order that we'll
19 send to plaintiffs where we can adjust the cases that
20 haven't been filed with the motion in one order.

21 We did want to put the warning to counsel in
22 the agenda going forward that if it's not within the
23 Rule 15 time period after, they should be filing a
24 motion and reaching out to us for our consent.

25 JUDGE WOLFSON: But are you looking to do by

1 that order the ones that have been done?

2 MS. TERSIGNI: Yes.

3 JUDGE WOLFSON: You are either going to look
4 to see if you consent to them, and if you don't you
5 are going to be asking that they be stricken and a
6 motion to be filed?

7 MS. TERSIGNI: Correct.

8 JUDGE WOLFSON: Okay.

9 MS. O'DELL: Your Honor, we will do our best
10 to deal with that.

11 I would ask that we be provided a list of the
12 cases involved and that will help us do the more
13 archeology in terms of what's been filed, who filed
14 it, so we can try to help with that process.

15 JUDGE WOLFSON: Thank you.

16 Then we've got 711 plaintiffs from
17 multi-plaintiff cases who have not filed short form
18 complaints. What are you doing on that?

19 MS. O'DELL: Well, a couple of things I would
20 say, your Honor.

21 Mr. Beisner and Mr. Silver and I have had
22 discussions about a group of plaintiffs that were
23 transferred into the MDL from Missouri in
24 multi-plaintiff complaints, some of which reside in
25 California, New Jersey or Delaware, and there would

1 not be federal subject matter jurisdiction here in the
2 MDL. So, therefore, short form complaints weren't
3 filed on those particular plaintiffs because obviously
4 that would have been inappropriate.

5 So we've worked out an agreement where there
6 will be essentially a private agreement between the
7 law firm and the defendants creating a moratorium for
8 those particular plaintiffs so that they can be
9 re-filed in the appropriate state court and basically
10 be taken care of from there.

11 So that's the bulk of those cases we believe
12 that there haven't been short form complaints. There
13 are also other groups. For example, if a case was
14 filed in Missouri with multi-plaintiffs removed,
15 transferred to the MDL, there may be a motion to
16 remand pending, so that there is not a short form
17 complaint filed because they are still disputing the
18 issue of federal jurisdiction. So that's another
19 group.

20 And then third, we have gone through the list
21 that has been provided and there is some
22 reconciliation issues where short form complaints have
23 been filed and maybe we just need to go through and
24 check the docket together.

25 The bottom line is we are focused on this

1 issue and we believe we could get it addressed, so
2 that the ones that should have short form complaints
3 filed are doing that.

4 Thank you.

5 JUDGE WOLFSON: And you are working out these
6 duplicate filed cases as well. Right?

7 MS. O'DELL: Yes, your Honor.

8 JUDGE WOLFSON: I think the rest of your
9 status letter is really just to tell me what's going
10 on around the country in your state cases and other
11 places where matters are pending.

12 I think that's it. What other tissues do you
13 have today, anything else?

14 Yes, Mr. Silver.

15 MR. SILVER: Hopefully, it's not going to be
16 an issue, Judge, but I didn't want to be in here on
17 Monday and then be writing a letter on Wednesday or
18 Thursday.

19 With regard to Imerys samples, there is
20 coordination with the asbestos side with the state
21 court case in California. There is some motion
22 practice going on there. I'm trying to work with the
23 PSC counsel there. I'm hoping it's not going to be an
24 issue, but there might be a letter later in the week
25 if it can't be resolved.

1 MS. O'DELL: Your Honor, we have been
2 resolving those issues. I'm not aware of anything
3 that's arisen that would make that unique, but we'll
4 try to do that.

5 Your Honor, the only other thing I would like
6 to say is, bring to you Ms. Parfitt's apologies. She
7 planned to be here today. She's apologized for not
8 letting you know in advance. She fell and broke her
9 foot on Saturday morning, unfortunately, and now is at
10 the surgeon's office being evaluated for surgery. She
11 says that she hopes to see you next time.

12 JUDGE WOLFSON: I hope so, too. I hope she
13 has a speedy recovery, and you can relay that.

14 MS. O'DELL: Thank you.

15 JUDGE WOLFSON: Anything with PCPC?

16 MR. LOCKE: No, your Honor.

17 JUDGE WOLFSON: You're happy campers? You're
18 good?

19 MR. LOCKE: Not happy, but we're good.

20 JUDGE WOLFSON: Okay.

21 I think our next date on the schedule is
22 August 23rd. What are we on for, 10:30?

23 MS. SHARKO: Yes.

24 JUDGE WOLFSON: That week I'm going to be
25 doing a two-week bench trial in a securities matter.

1 You see I'm not having a happy end of summer. So I
2 told them, though, because it is bench and I don't
3 have a jury, that I'm going to keep this conference
4 on. Maybe we could start at 10 o'clock that morning,
5 so I don't have to take too much time away from the
6 trial.

7 MS. SHARKO: Sure.

8 MS. O'DELL: That's fine, your Honor.

9 JUDGE WOLFSON: So we'll keep the date,
10 though, and let's pick a date for September because we
11 usually try to keep at least one ahead.

12 How about the 26th of September? That's a
13 Wednesday. Or I can do the 27th, which is a Thursday.

14 MS. SHARKO: Either is going for us.

15 MS. O'DELL: Your Honor, that's fine for us.

16 JUDGE WOLFSON: Which do you prefer, the
17 Wednesday or the Thursday?

18 MS. O'DELL: Thursday would be better, your
19 Honor, if you don't mind.

20 JUDGE WOLFSON: Sure. We'll do that one at
21 10:30, though. That one should be nearing the end of
22 the sampling, and we'll know where we are, and maybe
23 we'll talk a little bit more about experts, also
24 obviously when we come in August.

25 And if for some reason come August 23rd you

1 think there really are no real issues to resolve and
2 things are going along very well and you don't think
3 it's necessary, let me know and I'll definitely see
4 you in September. But there always seems to be
5 something, though. It's good to come and meet.

6 If there's nothing else, then I'll let you go.
7 You have some busy times ahead, and thank you, and
8 everybody enjoy some more of the summer.

9 THE DEPUTY CLERK: All rise.

10 (Proceedings concluded.)

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I, **Vincent Russomello**, Official United States
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12 I do further certify that I am neither a relative
13 nor employee nor attorney nor counsel of any of the
14 parties to this action, and that I am neither a
15 relative nor employee of such attorney or counsel, and
16 that I am not financially interested in this action.

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	23rd [3] - 12:3, 42:22, 43:25 25 [2] - 11:2, 22:16 25th [1] - 28:13 26th [1] - 43:12 27th [1] - 43:13 28 [2] - 3:7, 28:12 2nd [1] - 29:6	8 8 [1] - 20:15 8300 [1] - 33:17	allow [1] - 13:3 alone [1] - 9:4 ambitious [1] - 32:13 amend [1] - 38:11 amended [1] - 38:6 America [1] - 2:11 AN [1] - 3:8 analysis [6] - 20:24, 21:20, 21:23, 23:23, 23:25, 25:18 ANN [1] - 2:10 answer [1] - 10:10 answered [1] - 13:7 answers [1] - 10:14 anticipate [2] - 26:13, 33:20 anticipating [1] - 28:19 anyway [4] - 5:1, 30:6, 34:15, 35:21 apologies [1] - 42:6 apologized [1] - 42:7 appeal [3] - 5:7, 5:9, 5:12 appealing [1] - 4:9 appearing [1] - 11:9 apply [1] - 13:17 appreciate [1] - 25:8 appropriate [3] - 8:19, 14:16, 40:9 April [2] - 28:23, 29:5 archeology [1] - 39:13 area [2] - 11:1, 35:23 areas [3] - 10:25, 32:19, 33:6 arguing [1] - 5:4 argument [1] - 5:25 arisen [1] - 42:3 arms [1] - 12:19 ARPS [1] - 1:19 asbestos [4] - 12:16, 20:10, 32:4, 41:20 asbestos-free [1] - 32:4 asccribe [1] - 14:13 aside [2] - 24:5, 32:18 assume [1] - 26:20 assumed [1] - 27:23 assure [1] - 13:3 attached [1] - 7:9 attorney [2] - 45:13, 45:15 August [5] - 12:14, 25:9, 42:22, 43:24, 43:25 available [3] - 18:5, 18:23, 33:1
0	26th [1] - 43:12 27th [1] - 43:13 28 [2] - 3:7, 28:12 2nd [1] - 29:6	9 9 [1] - 1:5 9th [1] - 29:10	
08608 [1] - 1:8			
1		A	
1 [1] - 11:6 1,000 [1] - 8:22 1-to-2 [1] - 22:9 1.2 [1] - 22:19 1.5 [1] - 23:14 10 [1] - 43:4 100 [1] - 23:10 10:00 [2] - 29:22, 30:10 10:30 [2] - 42:22, 43:21 11th [2] - 29:22, 30:10 12 [2] - 20:7, 23:23 15 [2] - 24:24, 38:23 15th [6] - 25:9, 25:11, 25:14, 25:24, 28:4, 28:15 16-MD-2738(FLW)(LHG [1] - 1:2 16th [3] - 26:5, 27:6, 27:17 17th [2] - 27:7, 28:3 18th [4] - 28:11, 28:12, 28:23, 29:6 1964 [1] - 6:6 1989 [3] - 7:16, 16:2, 16:8 1990 [3] - 8:10, 9:6, 9:12 1990s [2] - 6:13, 6:16 1st [1] - 25:16	3 30 [21] - 9:10, 9:16, 16:20, 16:23, 17:2, 17:4, 18:17, 25:12, 27:3, 27:7, 27:16, 27:19, 28:16, 32:14, 32:20, 33:9, 33:25, 34:3, 34:4, 34:11, 34:13 30(b)(6) [4] - 4:10, 4:20, 10:17, 11:24 30-day [5] - 18:1, 26:25, 28:10, 31:1, 34:18 30th [2] - 25:15, 25:16	a.m. [2] - 29:22, 30:10 able [3] - 7:14, 13:4, 30:16 ABOVE [1] - 3:10 ABOVE-ENTITLED [1] - 3:10 access [1] - 18:8 accomplished [1] - 25:20 accurate [4] - 13:12, 23:7, 33:22, 45:8 ACCURATE [1] - 3:8 accurately [1] - 23:17 action [2] - 45:14, 45:16 ACTION [1] - 1:2 add [3] - 13:6, 26:4, 26:9 added [2] - 4:16, 33:11 additional [7] - 7:12, 8:4, 8:6, 11:6, 18:2, 20:9, 25:13 additions [1] - 6:5 address [2] - 5:8, 19:15 addressed [4] - 4:17, 5:15, 31:5, 41:1 addressing [1] - 30:13 adequately [1] - 20:10 adjust [1] - 38:19 Administration [1] - 32:3 advance [1] - 42:8 agenda [4] - 4:7, 30:11, 38:10, 38:22 aggressive [1] - 12:19 ago [1] - 15:24 agree [1] - 13:12 agreed [2] - 35:25, 36:4 agreement [3] - 25:22, 40:5, 40:6 ahead [4] - 28:2, 31:6, 43:11, 44:7 ALABAMA [1] - 1:14 aliquot [1] - 22:17 ALLEN [1] - 1:13	
		4 4 [2] - 22:15, 24:3 40 [1] - 9:16 402 [1] - 1:8 41 [1] - 36:19 43 [1] - 25:1 45 [2] - 25:23, 27:3	
		5 5 [2] - 21:9, 23:3 58 [4] - 24:10, 24:14, 24:15, 25:1 588-9516 [1] - 1:25 5th [1] - 29:20	
		6 6 [2] - 20:7, 23:23 60 [3] - 27:3, 27:11, 28:4 609 [1] - 1:25 675 [1] - 45:23	
2		7 7 [4] - 21:1, 21:10, 23:12, 23:13 711 [1] - 39:16 753 [1] - 3:7 7800 [1] - 33:17 7th [2] - 20:15, 29:21	

<p>avenues [1] - 17:12 aware [6] - 20:5, 36:6, 36:8, 36:10, 36:12, 42:2</p>	<p>2:15</p>	<p>communicates [1] - 38:10 communications [1] - 30:15</p>	<p>COURT [8] - 1:1, 1:25, 3:15, 6:23, 16:24, 29:20, 30:9, 38:1 court [3] - 4:1, 40:9, 41:21</p>	
<p>B</p>	<p>BARRY [1] - 2:6 BE [1] - 3:8 BEASLEY [1] - 1:13 beforehand [1] - 4:8 begin [3] - 4:13, 19:19, 20:24 beginning [1] - 14:19 behold [1] - 1:16 behalf [2] - 1:20, 2:11 Behalf [1] - 2:7 Beisner [1] - 39:21 BEISNER [1] - 1:20 bench [2] - 42:25, 43:2 best [2] - 25:19, 39:9 better [2] - 25:18, 43:18 between [2] - 36:4, 40:6 beyond [1] - 10:23 BIDDLE [1] - 1:17 biggest [2] - 8:11, 21:3 biologists [1] - 31:10 bit [1] - 43:23 blanks [2] - 21:9, 23:2 block [1] - 32:24 blocking [1] - 34:17 bodies [1] - 30:14 bottom [1] - 40:25 box [4] - 11:1, 11:15, 11:25, 16:6 boxes [2] - 11:7, 18:7 breakdown [1] - 20:16 brief [1] - 37:16 briefed [3] - 37:3, 37:4, 37:13 briefing [4] - 6:1, 37:8, 37:19, 37:21 bring [3] - 18:10, 35:5, 42:6 brings [1] - 25:23 broad [1] - 12:22 broader [1] - 15:6 broke [1] - 42:8 built [1] - 30:1 bulk [1] - 40:11 busy [1] - 44:7 buying [1] - 21:3 BY [9] - 1:14, 1:15, 1:18, 1:20, 2:5, 2:6, 2:9, 2:10,</p>	<p>C</p> <p>California [2] - 39:25, 41:21 campers [1] - 42:17 care [1] - 40:10 CASAMENTO [1] - 2:6 case [6] - 5:19, 28:21, 32:5, 34:10, 40:13, 41:21 cases [6] - 38:19, 39:12, 39:17, 40:11, 41:6, 41:10 causation [5] - 4:23, 14:6, 32:18, 34:10, 34:21 CCR [3] - 1:24, 3:15, 45:23 cell [1] - 31:10 centrifuge [1] - 22:18 certain [3] - 33:13, 33:14, 34:21 certainly [5] - 9:13, 31:18, 33:3, 35:19, 38:12 Certificate [1] - 45:23 CERTIFIED [1] - 3:8 Certified [1] - 45:6 certify [2] - 45:7, 45:12 challenging [1] - 32:11 chart [2] - 36:7, 36:11 check [1] - 40:24 CHRISTOPHER [1] - 1:15 circumscribed [1] - 16:13 CIVIL [1] - 1:2 CLARKSON [1] - 1:8 clear [1] - 11:5 clearly [2] - 25:2, 32:5 clerk [1] - 37:7 CLERK [2] - 4:3, 44:9 clumped [1] - 6:14 collaborative [2] - 11:22, 13:13 coming [3] - 25:3, 25:9, 36:17 commenced [1] - 15:25 Committee [1] - 1:16 communicated [1] - 38:12</p>	<p>communicates [1] - 38:10 communications [1] - 30:15 companies [1] - 16:5 company [1] - 16:8 complaint [1] - 40:17 complaints [7] - 38:6, 39:18, 39:24, 40:2, 40:12, 40:22, 41:2 complete [6] - 8:6, 16:22, 25:10, 25:15, 37:15, 38:1 complex [1] - 23:8 comply [1] - 38:14 concentrate [1] - 22:20 concentration [1] - 22:6 concern [1] - 14:24 concerned [2] - 10:7, 26:8 concluded [2] - 37:22, 44:10 conclusion [1] - 28:16 concretely [1] - 5:20 CONFERENCE [1] - 1:5 conference [3] - 29:16, 37:6, 43:3 consent [4] - 38:7, 38:18, 38:24, 39:4 consider [1] - 32:7 conspiracy [2] - 37:9, 37:23 consuming [1] - 24:9 container [1] - 22:10 contemplating [1] - 31:4 cooperate [1] - 33:4 coordination [1] - 41:20 correct [9] - 6:9, 9:11, 22:2, 22:3, 30:18, 36:14, 36:22, 37:10, 39:7 correspondence [1] - 7:14 COUGHLIN [1] - 2:8 counsel [7] - 32:21, 38:11, 38:13, 38:21, 41:23, 45:13, 45:15 countries [1] - 14:24 country [2] - 20:3, 41:10 couple [3] - 16:16, 19:18, 39:19 course [4] - 22:8, 31:22, 35:17, 38:12 Court [2] - 45:6</p>	<p>D</p> <p>D.C [4] - 1:20, 2:5, 29:17, 29:20 data [4] - 23:24, 24:2, 31:18, 32:6 date [8] - 19:8, 25:10, 29:18, 37:17, 42:21, 43:9, 43:10, 45:10 dates [4] - 9:8, 29:17, 32:23, 35:4 Daubert [11] - 14:7, 19:9, 26:13, 26:15, 28:20, 28:24, 30:4, 30:5, 32:12, 32:17, 34:22 days [22] - 8:25, 16:20, 16:23, 17:2, 17:4, 18:17, 25:12, 25:23, 27:3, 27:7, 27:11, 27:16, 27:18, 28:4, 28:12, 28:16, 32:14, 32:20, 33:25, 34:4, 34:17 deal [10] - 4:12, 4:16, 8:14, 8:16, 10:4, 17:8, 27:22, 34:19, 35:8, 39:10 dealing [3] - 6:2, 11:21, 20:12 decade [2] - 6:17, 6:18 decades [4] - 6:8, 6:11, 7:18, 15:7 December [3] - 27:7, 27:10, 28:3 decide [1] - 29:23 decision [1] - 9:5 declaration [9] - 10:3, 10:12, 10:15, 10:18, 15:14, 16:11, 16:14,</p>

<p>18:16, 18:19 declarations [4] - 17:5, 17:7, 17:17, 25:4 Defendant [3] - 1:20, 2:7, 2:11 defendants [5] - 17:1, 30:16, 32:11, 38:5, 40:7 defense [1] - 28:17 definitely [2] - 35:21, 44:3 Delaware [1] - 39:25 delaying [1] - 19:6 delicate [1] - 23:14 denied [1] - 4:19 dep [1] - 4:10 dependent [2] - 31:14, 31:17 depiction [1] - 33:22 depose [3] - 26:14, 28:9, 31:1 deposition [6] - 10:4, 10:13, 26:18, 26:25, 32:23, 35:20 depositions [12] - 28:15, 28:17, 30:2, 30:3, 32:12, 33:1, 33:5, 34:1, 34:2, 34:4, 34:18, 35:1 deps [1] - 30:6 DEPUTY [2] - 4:3, 44:9 description [1] - 21:15 destroyed [5] - 12:1, 15:18, 15:21, 15:24, 17:19 destruction [5] - 4:11, 4:21, 15:19, 15:22, 17:20 determine [2] - 17:14, 17:18 determining [1] - 15:3 diagnosed [1] - 9:15 diagnoses [1] - 9:8 different [5] - 10:17, 10:25, 11:3, 21:12, 22:1 direct [1] - 10:18 discipline [1] - 33:15 disclosed [1] - 33:13 disclosure [2] - 31:2, 31:8 discoveries [1] - 15:1 discovery [5] - 6:24, 9:24, 10:25, 15:16, 30:15 discrete [1] - 10:8</p>	<p>discussions [1] - 39:22 dismissal [1] - 36:2 dismissals [2] - 35:25, 36:19 disputes [1] - 13:23 disputing [1] - 40:17 distinct [1] - 6:15 DISTRICT [2] - 1:1, 1:1 dividing [1] - 18:12 docket [1] - 40:24 document [3] - 7:15, 9:1, 20:10 dollar [1] - 19:23 done [15] - 4:15, 5:10, 8:6, 12:18, 17:9, 17:19, 19:4, 21:16, 21:20, 26:19, 27:8, 32:22, 33:25, 38:13, 39:1 double [1] - 13:15 down [7] - 5:14, 9:25, 12:2, 14:10, 21:24, 21:25, 22:21 Dr [3] - 23:18, 24:22, 31:23 DRINKER [1] - 1:17 Drug [1] - 32:3 due [2] - 27:3, 37:19 DUFFY [1] - 2:8 duplicate [1] - 41:6 duplicative [1] - 24:7 during [1] - 21:16</p>	<p>entire [3] - 6:17, 6:18, 11:17 ENTITLED [1] - 3:10 entitled [1] - 15:2 epidemiologist [1] - 31:16 epidemiologists [1] - 31:9 Eppendorf [1] - 22:18 equally [1] - 13:17 especially [1] - 25:21 ESQUIRE [10] - 1:14, 1:15, 1:18, 1:18, 1:20, 2:5, 2:6, 2:9, 2:10, 2:15 ESQUIRES [8] - 1:13, 1:15, 1:17, 1:19, 2:4, 2:6, 2:8, 2:10 essentially [1] - 40:6 estimating [1] - 23:17 evaluated [1] - 42:10 evaluating [1] - 32:7 exactly [2] - 13:12, 27:25 examined [1] - 11:10 example [9] - 5:17, 5:19, 6:13, 6:16, 7:16, 9:14, 16:7, 18:6, 40:13 except [1] - 9:20 exciting [1] - 19:11 excuse [1] - 17:15 exhaustive [1] - 14:20 exist [1] - 15:18 existed [1] - 16:8 existence [1] - 17:19 expeditiously [2] - 33:5, 35:9 expert [8] - 12:22, 25:22, 25:24, 26:6, 26:14, 27:2, 31:25, 32:24 experts [24] - 19:8, 26:24, 28:9, 30:3, 30:25, 31:3, 31:9, 31:23, 32:10, 32:19, 33:7, 33:8, 33:9, 33:13, 33:14, 33:19, 33:22, 33:23, 34:3, 34:7, 34:9, 34:11, 43:23 explain [1] - 15:18 explored [1] - 15:9 extent [1] - 17:6 extra [1] - 27:19</p>	<p>fair [4] - 7:25, 12:17, 12:23, 14:2 fairly [1] - 10:14 far [1] - 14:6 faster [1] - 16:19 February [4] - 7:10, 27:12, 28:4, 28:12 federal [2] - 40:1, 40:18 fell [1] - 42:8 few [1] - 34:15 fiber [1] - 20:11 fibers [1] - 20:9 FIELD [1] - 2:10 file [2] - 28:6, 38:11 filed [18] - 7:9, 20:15, 28:13, 28:17, 36:3, 38:6, 38:20, 39:6, 39:13, 39:17, 40:3, 40:9, 40:14, 40:17, 40:23, 41:3, 41:6 filming [3] - 28:20, 28:24, 38:23 filter [2] - 23:10, 23:12 filtered [1] - 23:9 final [1] - 18:16 finalized [1] - 11:23 financially [1] - 45:16 findings [1] - 7:11 fine [9] - 15:22, 18:17, 27:1, 29:4, 29:5, 29:9, 30:9, 43:8, 43:15 finished [1] - 28:15 firm [2] - 36:22, 40:7 FIRM [1] - 2:14 Firm [2] - 36:25, 37:6 Firm's [1] - 37:17 first [9] - 4:17, 5:2, 5:9, 8:17, 9:6, 12:13, 19:21, 20:19, 26:2 FISHER [1] - 1:8 Fisher [1] - 22:13 fit [1] - 9:13 five [2] - 6:21, 7:18 flexible [1] - 33:2 FLOM [1] - 1:19 FLORIDA [1] - 1:15 fluff [1] - 24:6 focus [5] - 7:5, 8:13, 8:15, 10:1, 23:16 focused [1] - 40:25 focusing [1] - 8:9 follow [1] - 17:9 follow-up [1] - 17:9 FOLLOWING [1] - 3:8</p>
<p>early [5] - 6:7, 7:10, 21:19, 27:11, 29:16 EAST [1] - 1:8 effort [1] - 23:20 eight [5] - 32:19, 33:6, 33:7, 33:21 either [4] - 8:5, 15:10, 39:3, 43:14 Electron [1] - 19:22 embellish [1] - 23:20 employee [2] - 45:13, 45:15 encompasses [1] - 12:22 end [3] - 27:3, 43:1, 43:21 endeavor [1] - 33:4 enjoy [1] - 44:8 enormously [1] - 31:20 ensure [1] - 38:14</p>	<p>E</p> <p>early [5] - 6:7, 7:10, 21:19, 27:11, 29:16 EAST [1] - 1:8 effort [1] - 23:20 eight [5] - 32:19, 33:6, 33:7, 33:21 either [4] - 8:5, 15:10, 39:3, 43:14 Electron [1] - 19:22 embellish [1] - 23:20 employee [2] - 45:13, 45:15 encompasses [1] - 12:22 end [3] - 27:3, 43:1, 43:21 endeavor [1] - 33:4 enjoy [1] - 44:8 enormously [1] - 31:20 ensure [1] - 38:14</p>	<p>expeditiously [2] - 33:5, 35:9 expert [8] - 12:22, 25:22, 25:24, 26:6, 26:14, 27:2, 31:25, 32:24 experts [24] - 19:8, 26:24, 28:9, 30:3, 30:25, 31:3, 31:9, 31:23, 32:10, 32:19, 33:7, 33:8, 33:9, 33:13, 33:14, 33:19, 33:22, 33:23, 34:3, 34:7, 34:9, 34:11, 43:23 explain [1] - 15:18 explored [1] - 15:9 extent [1] - 17:6 extra [1] - 27:19</p>	<p>F</p> <p>fact [2] - 6:2, 24:19</p>

following [2] - 29:21, 37:18 Food [1] - 32:3 foot [1] - 42:9 FOR [1] - 1:1 foregoing [1] - 45:8 foreign [1] - 30:14 forge [1] - 28:1 form [6] - 39:17, 40:2, 40:12, 40:16, 40:22, 41:2 forth [1] - 45:11 forward [2] - 36:23, 38:22 frankly [3] - 5:14, 17:10, 25:22 FREDA [1] - 1:10 free [1] - 32:4 Friday [3] - 26:6, 37:18 fully [1] - 37:4 furnace [1] - 22:14 future [3] - 13:23, 33:21, 34:8	H happy [4] - 21:14, 42:17, 42:19, 43:1 hard [2] - 6:19 hear [1] - 26:4 heard [3] - 8:23, 10:6, 35:14 hearing [11] - 8:18, 8:20, 14:12, 19:9, 26:15, 29:11, 29:25, 30:4, 30:5, 32:12, 34:22 heavy [1] - 22:19 help [2] - 39:12, 39:14 helpful [1] - 21:18 hereby [1] - 45:7 hereinbefore [1] - 45:10 Hoke [1] - 36:24 HOKE [5] - 2:15, 36:24, 37:2, 38:2, 38:4 holding [1] - 30:3 holidays [2] - 27:10, 27:17 hone [1] - 34:21 Honor [50] - 5:6, 6:25, 7:24, 9:11, 12:13, 14:2, 15:15, 16:9, 16:21, 17:23, 20:1, 21:14, 22:13, 22:23, 23:16, 25:20, 26:10, 26:22, 28:8, 28:14, 28:22, 29:4, 29:9, 30:8, 30:18, 30:19, 31:7, 33:3, 33:24, 34:9, 34:24, 35:3, 35:18, 36:8, 36:10, 36:18, 36:24, 37:2, 37:5, 38:9, 38:17, 39:9, 39:20, 41:7, 42:1, 42:5, 42:16, 43:8, 43:15, 43:19 HONORABLE [1] - 1:10 hope [4] - 13:7, 34:12, 42:12 hopefully [3] - 14:21, 38:10, 41:15 hopes [1] - 42:11 hoping [2] - 25:11, 41:23 hours [13] - 20:7, 20:20, 21:1, 21:3, 21:9, 21:10, 22:15, 23:3, 23:14, 23:23, 23:24, 24:3 house [1] - 18:10	I idea [2] - 22:25, 34:17 identified [1] - 32:19 identify [3] - 13:5, 32:24, 34:16 identifying [2] - 34:7, 34:9 Illinois [1] - 37:24 illustrate [1] - 5:18 Imerys [22] - 2:11, 5:15, 5:20, 6:3, 6:6, 6:20, 7:4, 7:6, 7:11, 8:2, 10:22, 11:21, 11:22, 11:24, 12:12, 13:18, 16:2, 16:8, 17:4, 24:11, 37:16, 41:19 Imerys' [1] - 13:13 important [5] - 11:18, 12:10, 24:16, 24:20, 25:6 impression [1] - 37:3 IN [2] - 1:4, 3:9 in-house [1] - 18:10 inappropriate [1] - 40:4 include [1] - 6:5 included [1] - 36:7 indicate [1] - 17:13 indicated [2] - 7:23, 11:12 individual [1] - 36:3 information [4] - 11:10, 17:22, 19:19, 38:9 initial [1] - 31:8 input [1] - 35:21 instances [1] - 33:13 interest [2] - 19:3, 19:5 interested [1] - 45:16 introducing [1] - 31:14 inventory [3] - 12:11, 12:20, 14:8 investigate [1] - 10:1 investigated [1] - 15:9 investigation [3] - 7:22, 8:1, 17:14 involved [4] - 11:12, 11:13, 12:21, 39:12 IS [1] - 3:8 Island [1] - 37:24 Iso [1] - 22:14 Iso-temp [1] - 22:14 issue [23] - 4:9, 4:13, 4:17, 4:23, 4:24, 4:25,	5:15, 9:25, 11:25, 12:13, 16:3, 20:12, 30:12, 34:19, 34:25, 35:1, 35:5, 38:6, 38:15, 40:18, 41:1, 41:16, 41:24 issues [9] - 8:24, 32:18, 34:10, 35:16, 36:15, 36:17, 40:22, 42:2, 44:1 itself [5] - 5:7, 9:4, 21:20, 21:23, 22:7
			J J&J [19] - 5:16, 5:21, 6:10, 6:14, 7:4, 7:5, 7:7, 7:13, 7:20, 8:10, 10:21, 11:21, 12:12, 13:14, 13:17, 13:25, 14:22, 16:12, 17:4 JERSEY [5] - 1:1, 1:18, 1:18, 2:6, 2:9 Jersey [2] - 39:25, 45:7 JOHN [1] - 1:20 JOHNSON [2] - 1:4 Johnson [6] - 1:20, 12:7, 32:3 join [2] - 13:16, 13:22 JUDGE [95] - 4:4, 5:8, 5:23, 6:10, 7:1, 7:5, 8:9, 8:13, 8:19, 9:9, 9:12, 9:19, 10:12, 10:21, 11:11, 13:9, 13:20, 14:4, 14:11, 15:16, 16:4, 16:11, 16:17, 17:25, 18:14, 18:20, 18:25, 19:2, 19:7, 19:11, 19:18, 20:14, 20:19, 20:25, 21:17, 21:25, 22:24, 23:6, 23:22, 24:14, 24:18, 25:21, 26:12, 26:17, 26:23, 27:1, 27:4, 27:6, 27:15, 27:20, 27:23, 28:1, 28:6, 28:10, 28:18, 28:23, 29:5, 29:10, 29:13, 30:21, 31:3, 31:12, 31:24, 32:9, 33:9, 34:12, 34:25, 35:11, 35:22, 36:12, 36:15, 36:20, 37:1, 37:9, 37:12, 37:15, 37:20, 37:23, 38:3, 38:5, 38:16, 38:25, 39:3, 39:8, 39:15, 41:5, 41:8, 42:12, 42:15, 42:17, 42:20, 42:24,

<p>43:9, 43:16, 43:20 judge [2] - 13:11, 27:13 Judge [15] - 4:10, 4:18, 4:19, 6:13, 9:5, 12:2, 12:5, 13:14, 13:16, 16:1, 17:6, 30:13, 35:6, 35:8, 41:16 JULIE [1] - 1:18 July [2] - 18:8, 20:15 JULY [1] - 1:5 June [6] - 29:11, 29:12, 29:13, 29:17, 29:22, 30:10 jurisdiction [2] - 40:1, 40:18 jury [1] - 43:3</p>	<p>limited [2] - 9:24, 15:7 limits [1] - 34:6 line [3] - 9:25, 14:10, 40:25 liquid [1] - 22:19 list [6] - 20:14, 32:10, 33:8, 36:1, 39:11, 40:20 litigation [4] - 12:15, 12:16, 15:25, 33:18 lives [1] - 9:16 LLC [1] - 2:14 location [1] - 20:10 LOCKE [3] - 2:5, 42:16, 42:19 locked [1] - 35:7 log [4] - 20:19, 20:21, 20:23, 21:2 log-in [2] - 20:19, 21:2 Longo [3] - 23:18, 24:22, 31:23 look [9] - 9:1, 9:3, 17:1, 20:14, 26:8, 29:17, 34:14, 39:3 looking [5] - 16:9, 25:25, 28:3, 28:23, 38:25 loop [2] - 35:14, 35:20 losing [1] - 27:18 loss [1] - 4:21 lost [1] - 12:1</p>	<p>meeting [1] - 34:15 mentioned [1] - 30:20 micro [1] - 22:18 micro-centrifuge [1] - 22:18 micrometer [2] - 23:10, 23:12 micrometers [1] - 23:13 Microscope [1] - 19:22 mid [1] - 18:8 midst [1] - 37:12 might [2] - 9:24, 41:24 MILLER [1] - 2:14 Miller [4] - 36:22, 36:25, 37:6, 37:17 milligrams [1] - 22:16 milliliters [1] - 22:19 million [1] - 19:23 million-dollar [1] - 19:23 mind [1] - 43:19 mine [1] - 11:2 mines [1] - 12:21 missing [1] - 6:8 Missouri [2] - 39:23, 40:14 mix [1] - 4:16 Model [1] - 22:14 modifying [1] - 17:6 moment [5] - 7:6, 14:9, 16:25, 29:16, 29:18 Monday [2] - 27:8, 41:17 month [1] - 34:15 months [1] - 34:16 moratorium [1] - 40:7 morning [2] - 42:9, 43:4 most [1] - 11:20 motion [7] - 28:7, 38:11, 38:20, 38:24, 39:6, 40:15, 41:21 motions [8] - 28:13, 28:17, 28:20, 28:24, 29:2, 35:23, 36:3, 36:21 motivation [1] - 14:13 move [1] - 27:21 moving [1] - 21:22 MR [41] - 5:17, 6:9, 6:12, 6:25, 7:3, 7:7, 8:11, 9:11, 9:14, 11:4, 11:13, 13:11, 14:2, 14:5, 15:15, 16:1, 16:6, 16:20, 17:23, 18:1, 18:16, 18:24, 19:1, 26:22, 27:13, 27:16, 35:3, 35:17, 36:24, 37:2,</p>	<p>37:5, 37:11, 37:14, 37:16, 37:21, 37:25, 38:2, 38:4, 41:15, 42:16, 42:19 MS [72] - 5:6, 8:17, 8:21, 10:6, 10:20, 16:15, 16:18, 16:23, 19:5, 19:10, 19:17, 20:1, 20:18, 20:22, 21:14, 21:18, 22:3, 23:4, 23:7, 24:12, 24:15, 25:19, 26:10, 26:16, 26:24, 27:2, 27:5, 27:10, 27:22, 27:25, 28:5, 28:8, 28:13, 28:14, 28:22, 29:3, 29:4, 29:8, 29:9, 29:12, 30:7, 30:8, 30:18, 30:23, 31:7, 31:16, 32:1, 32:16, 33:3, 33:11, 34:6, 34:24, 35:13, 36:6, 36:10, 36:14, 36:18, 38:9, 38:17, 39:2, 39:7, 39:9, 39:19, 41:7, 42:1, 42:14, 42:23, 43:7, 43:8, 43:14, 43:15, 43:18 muffle [1] - 22:14 muffled [1] - 22:17 multi [3] - 39:17, 39:24, 40:14 multi-plaintiff [2] - 39:17, 39:24 multi-plaintiffs [1] - 40:14 multiple [7] - 21:21, 21:22, 22:3, 33:14, 33:19, 33:20, 34:2 museums [1] - 14:22 must [1] - 23:22 MY [1] - 3:9</p>
<p>K</p> <p>keep [5] - 34:14, 35:19, 43:3, 43:9, 43:11 keeping [1] - 31:8 kept [1] - 35:13</p> <p>L</p> <p>lab [2] - 20:5, 22:4 labeled [1] - 22:18 laboratory [2] - 21:9, 23:2 labs [1] - 20:3 Lanzo [4] - 11:1, 13:1, 16:6 larger [1] - 22:8 last [3] - 8:23, 8:25, 12:14 late [1] - 18:8 latency [2] - 9:7, 9:9 law [2] - 37:7, 40:7 learn [2] - 18:1, 18:17 learned [1] - 11:16 learning [1] - 11:17 least [5] - 13:21, 27:18, 28:16, 30:13, 43:11 LEIGH [1] - 1:14 less [1] - 32:1 letter [10] - 6:1, 9:1, 10:10, 10:11, 13:21, 13:25, 20:15, 41:9, 41:17, 41:24 letters [2] - 4:8, 5:2 letting [1] - 42:8 LEVIN [1] - 1:15 light [1] - 37:6</p>	<p>ma'am [1] - 20:18 machine [6] - 19:23, 19:24, 20:2, 20:4, 22:5 maintenance [1] - 4:21 March [3] - 28:11, 28:12, 28:13 marching [1] - 19:3 MARK [1] - 2:9 MARKETING [1] - 1:5 material [1] - 22:15 materials [1] - 11:7 MATTER [1] - 3:10 matter [3] - 17:7, 40:1, 42:25 matters [1] - 41:11 McTIERNAN [1] - 2:6 MDL [4] - 13:2, 39:23, 40:2, 40:15 MEAGHER [1] - 1:19 means [2] - 21:7, 23:1 meet [1] - 44:5</p>	<p>meeting [1] - 34:15 months [1] - 34:16 moratorium [1] - 40:7 morning [2] - 42:9, 43:4 most [1] - 11:20 motion [7] - 28:7, 38:11, 38:20, 38:24, 39:6, 40:15, 41:21 motions [8] - 28:13, 28:17, 28:20, 28:24, 29:2, 35:23, 36:3, 36:21 motivation [1] - 14:13 move [1] - 27:21 moving [1] - 21:22 MR [41] - 5:17, 6:9, 6:12, 6:25, 7:3, 7:7, 8:11, 9:11, 9:14, 11:4, 11:13, 13:11, 14:2, 14:5, 15:15, 16:1, 16:6, 16:20, 17:23, 18:1, 18:16, 18:24, 19:1, 26:22, 27:13, 27:16, 35:3, 35:17, 36:24, 37:2,</p>	<p>N</p> <p>nature [1] - 4:22 nearing [1] - 43:21 necessary [3] - 31:1, 34:20, 44:3 need [9] - 5:19, 14:7, 15:7, 32:6, 32:21, 33:1, 34:6, 34:11, 40:23 needs [1] - 33:19 negotiating [1] - 11:20 neighborhood [1] - 7:19 NEW [5] - 1:1, 1:18, 1:18, 2:6, 2:9</p>

<p>New [2] - 39:25, 45:7 new [3] - 6:4, 10:25, 24:10 next [6] - 20:25, 34:15, 35:23, 36:20, 42:11, 42:21 NJ [1] - 1:8 NO [1] - 1:2 nonetheless [1] - 24:9 normal [1] - 38:12 normally [3] - 4:7, 13:20, 30:2 note [1] - 17:17 NOTES [1] - 3:9 nothing [3] - 14:5, 35:14, 44:6 notices [1] - 11:24 November [4] - 25:24, 26:5, 27:7, 27:17 number [10] - 4:6, 10:8, 20:7, 21:4, 30:25, 31:13, 33:12, 33:16, 34:7, 35:24 numerous [1] - 35:19</p>	<p>October [3] - 25:14, 25:16, 26:3 OF [3] - 1:1, 1:4, 3:9 office [2] - 37:6, 42:10 OFFICIAL [2] - 1:25, 3:15 Official [1] - 45:5 oncologist [1] - 31:18 oncologists [1] - 31:11 one [28] - 4:7, 5:20, 7:4, 14:3, 18:2, 19:22, 20:2, 20:4, 20:5, 20:19, 20:25, 21:24, 22:1, 22:4, 26:21, 27:4, 27:13, 28:19, 29:24, 30:12, 30:13, 33:4, 36:2, 38:20, 43:11, 43:20, 43:21 one-day [1] - 29:24 ones [9] - 24:19, 24:22, 27:21, 31:13, 34:22, 35:24, 36:16, 39:1, 41:2 ongoing [1] - 33:18 open [2] - 4:1, 35:1 opportunity [2] - 8:1, 28:9 oppose [1] - 29:2 opposition [1] - 29:1 option [1] - 15:6 order [6] - 12:3, 22:20, 36:8, 38:18, 38:20, 39:1 ordered [1] - 37:7 orders [2] - 7:9, 19:3 organic [1] - 22:15 organize [1] - 33:4 original [1] - 24:25 ourselves [1] - 13:3 overestimated [1] - 21:5 overlap [1] - 24:4 overtur [1] - 9:5</p>	<p>pathologist [1] - 31:21 pathologists [1] - 31:11 PATRICIA [1] - 2:6 Pause [1] - 29:19 pause [1] - 17:16 PCPC [2] - 2:7, 42:15 pending [3] - 36:2, 40:16, 41:11 PENNSYLVANIA [1] - 2:10 people [2] - 32:25, 38:14 per [5] - 20:7, 20:20, 21:1, 23:24, 34:11 perhaps [3] - 4:17, 4:23, 26:1 period [17] - 6:21, 8:10, 8:11, 8:16, 9:7, 9:9, 10:2, 10:8, 16:13, 18:1, 26:25, 28:11, 30:2, 31:1, 34:5, 34:18, 38:23 periods [1] - 6:5 permitted [1] - 9:25 person [5] - 20:5, 21:24, 22:1, 32:17 perspective [1] - 10:4 photograph [1] - 20:23 pick [1] - 43:10 picked [1] - 24:14 Pierre [1] - 13:1 piggyback [1] - 26:21 Pisano [10] - 4:18, 4:19, 12:2, 12:5, 13:14, 13:16, 17:7, 30:13, 35:6, 35:9 Pisano's [2] - 4:10, 9:5 place [4] - 17:21, 30:22, 34:5, 45:10 placed [5] - 22:11, 22:17, 22:20, 23:12, 38:10 places [1] - 41:11 plaintiff [4] - 4:20, 5:4, 39:17, 39:24 plaintiffs [11] - 10:7, 30:14, 32:22, 33:17, 36:3, 38:19, 39:16, 39:22, 40:3, 40:8, 40:14 Plaintiffs [1] - 1:16 planned [1] - 42:7 point [9] - 5:1, 5:12, 9:21, 9:23, 14:24, 15:5, 17:10, 36:13, 38:13 points [2] - 11:4, 12:9 policy [2] - 15:22, 17:20 position [2] - 13:13,</p>	<p>13:24 possible [5] - 15:9, 17:12, 18:9, 32:23, 33:5 post-2000 [1] - 6:4 potential [1] - 34:8 POWDER [1] - 1:5 practice [2] - 13:23, 41:22 PRACTICES [1] - 1:5 prefer [1] - 43:16 prejudice [1] - 36:1 preparation [7] - 21:1, 21:6, 21:8, 22:7, 23:2, 23:10, 24:3 prepare [3] - 10:16, 20:24, 21:7 prepared [1] - 23:9 preserving [1] - 12:14 pretty [1] - 6:14 previously [1] - 24:23 principal [1] - 5:25 principally [1] - 5:15 private [1] - 40:6 proactive [1] - 18:9 problem [1] - 18:6 procedure [3] - 20:20, 20:24, 23:20 proceeding [1] - 24:24 Proceedings [1] - 44:10 proceedings [1] - 45:9 process [8] - 11:17, 18:4, 18:11, 22:6, 23:14, 35:7, 35:15, 39:14 produce [2] - 12:6, 12:8 produced [4] - 7:21, 8:22, 26:25, 30:5 producing [2] - 14:22, 29:23 production [2] - 5:22, 7:15 PRODUCTS [1] - 1:5 products [1] - 32:4 properly [1] - 10:1 proposal [1] - 38:18 proposed [1] - 36:8 protocol [1] - 23:11 provide [1] - 12:24 provided [4] - 6:4, 19:20, 39:11, 40:21 PSC [3] - 11:8, 14:5, 41:23 pull [1] - 7:14 purpose [2] - 12:15, 15:4</p>
<p>O</p> <p>o'clock [1] - 43:4 O'Dell [11] - 5:5, 11:21, 12:17, 13:6, 16:24, 18:3, 19:15, 26:7, 31:13, 32:18, 38:8 O'DELL [40] - 1:14, 5:6, 19:17, 20:1, 20:18, 20:22, 21:14, 21:18, 22:3, 23:4, 23:7, 24:12, 24:15, 25:19, 26:10, 28:8, 28:14, 28:22, 29:4, 29:9, 30:8, 30:18, 30:23, 31:7, 31:16, 32:1, 33:3, 33:11, 34:24, 36:6, 36:18, 38:9, 39:9, 39:19, 41:7, 42:1, 42:14, 43:8, 43:15, 43:18 oath [15] - 8:5, 10:3, 10:11, 10:14, 11:8, 11:9, 11:14, 11:19, 12:5, 13:1, 13:2, 15:8, 15:13, 17:11 objecting [1] - 4:9 objective [1] - 14:19 obviously [2] - 40:3, 43:24 occasions [1] - 35:19 occurred [1] - 15:19</p> <p>P</p> <p>page [1] - 20:15 PAPANTONIO [1] - 1:15 paperload [1] - 13:15 papers [2] - 10:24, 29:14 Parfitt's [1] - 42:6 part [3] - 16:2, 18:6, 29:17 particular [3] - 20:6, 40:3, 40:8 particularly [1] - 33:20 parties [2] - 36:5, 45:14 party [1] - 34:25</p>	<p>pathologist [1] - 31:21 pathologists [1] - 31:11 PATRICIA [1] - 2:6 Pause [1] - 29:19 pause [1] - 17:16 PCPC [2] - 2:7, 42:15 pending [3] - 36:2, 40:16, 41:11 PENNSYLVANIA [1] - 2:10 people [2] - 32:25, 38:14 per [5] - 20:7, 20:20, 21:1, 23:24, 34:11 perhaps [3] - 4:17, 4:23, 26:1 period [17] - 6:21, 8:10, 8:11, 8:16, 9:7, 9:9, 10:2, 10:8, 16:13, 18:1, 26:25, 28:11, 30:2, 31:1, 34:5, 34:18, 38:23 periods [1] - 6:5 permitted [1] - 9:25 person [5] - 20:5, 21:24, 22:1, 32:17 perspective [1] - 10:4 photograph [1] - 20:23 pick [1] - 43:10 picked [1] - 24:14 Pierre [1] - 13:1 piggyback [1] - 26:21 Pisano [10] - 4:18, 4:19, 12:2, 12:5, 13:14, 13:16, 17:7, 30:13, 35:6, 35:9 Pisano's [2] - 4:10, 9:5 place [4] - 17:21, 30:22, 34:5, 45:10 placed [5] - 22:11, 22:17, 22:20, 23:12, 38:10 places [1] - 41:11 plaintiff [4] - 4:20, 5:4, 39:17, 39:24 plaintiffs [11] - 10:7, 30:14, 32:22, 33:17, 36:3, 38:19, 39:16, 39:22, 40:3, 40:8, 40:14 Plaintiffs [1] - 1:16 planned [1] - 42:7 point [9] - 5:1, 5:12, 9:21, 9:23, 14:24, 15:5, 17:10, 36:13, 38:13 points [2] - 11:4, 12:9 policy [2] - 15:22, 17:20 position [2] - 13:13,</p>	<p>13:24 possible [5] - 15:9, 17:12, 18:9, 32:23, 33:5 post-2000 [1] - 6:4 potential [1] - 34:8 POWDER [1] - 1:5 practice [2] - 13:23, 41:22 PRACTICES [1] - 1:5 prefer [1] - 43:16 prejudice [1] - 36:1 preparation [7] - 21:1, 21:6, 21:8, 22:7, 23:2, 23:10, 24:3 prepare [3] - 10:16, 20:24, 21:7 prepared [1] - 23:9 preserving [1] - 12:14 pretty [1] - 6:14 previously [1] - 24:23 principal [1] - 5:25 principally [1] - 5:15 private [1] - 40:6 proactive [1] - 18:9 problem [1] - 18:6 procedure [3] - 20:20, 20:24, 23:20 proceeding [1] - 24:24 Proceedings [1] - 44:10 proceedings [1] - 45:9 process [8] - 11:17, 18:4, 18:11, 22:6, 23:14, 35:7, 35:15, 39:14 produce [2] - 12:6, 12:8 produced [4] - 7:21, 8:22, 26:25, 30:5 producing [2] - 14:22, 29:23 production [2] - 5:22, 7:15 PRODUCTS [1] - 1:5 products [1] - 32:4 properly [1] - 10:1 proposal [1] - 38:18 proposed [1] - 36:8 protocol [1] - 23:11 provide [1] - 12:24 provided [4] - 6:4, 19:20, 39:11, 40:21 PSC [3] - 11:8, 14:5, 41:23 pull [1] - 7:14 purpose [2] - 12:15, 15:4</p>	

<p>purposes [2] - 15:2, 32:7 PURSUANT [1] - 3:7 put [10] - 7:7, 11:24, 12:4, 13:25, 22:12, 23:11, 24:5, 30:23, 34:3, 38:21 putting [7] - 8:4, 11:7, 11:8, 12:25, 13:2, 32:18, 38:17</p>	<p>regulatory [4] - 30:14, 31:9, 31:24, 32:17 rejected [1] - 35:6 relates [1] - 5:20 relative [2] - 45:12, 45:15 relay [1] - 42:13 relevance [1] - 14:15 relevancy [1] - 9:7 relevant [6] - 4:23, 31:19, 31:20, 31:21, 32:2, 32:17 rely [1] - 12:24 remains [1] - 15:4 remand [2] - 36:21, 40:16 remove [1] - 22:15 removed [3] - 22:9, 22:16, 40:14 reply [1] - 29:7 report [8] - 12:22, 24:3, 25:22, 26:6, 26:18, 27:2, 27:6, 36:7</p>	<p>17:20 results [1] - 7:20 reveal [2] - 25:4, 25:12 review [2] - 23:24, 24:2 reviewing [3] - 20:6, 24:1, 24:22 Rhode [1] - 37:24 ripe [1] - 7:25 rise [2] - 4:3, 44:9 rolling [1] - 18:15 route [1] - 4:25 RPR [1] - 1:24 rule [1] - 34:9 Rule [2] - 36:19, 38:23 ruled [2] - 12:5, 12:6 rules [1] - 38:14 rulings [2] - 4:10, 13:17 RUSSONIELLO [2] - 1:24, 3:15 Russoniello [4] - 3:14, 45:5, 45:22, 45:23</p>	<p>Scientific [1] - 22:14 search [1] - 8:7 searched [1] - 17:12 searches [2] - 14:20 seat [1] - 26:7 seated [1] - 4:5 second [4] - 5:23, 13:19, 14:3, 30:19 SECTION [1] - 3:7 securities [1] - 42:25 see [8] - 5:14, 7:20, 9:6, 10:9, 39:4, 42:11, 43:1, 44:3 selected [3] - 24:15, 24:19, 24:23 selecting [1] - 18:12 selection [1] - 24:25 send [3] - 4:7, 10:10, 38:19 sense [1] - 21:2 sent [4] - 4:8, 7:13, 8:25, 13:21</p>
<p>Q</p> <p>questioning [1] - 4:11 questions [5] - 9:2, 11:15, 11:19, 17:8, 19:19 quickly [1] - 16:13 quite [1] - 23:8 quote [1] - 25:17</p>	<p>R</p> <p>raise [1] - 7:24 raised [2] - 12:13, 38:5 RE [1] - 1:4 re [1] - 40:9 re-filed [1] - 40:9 reaching [1] - 38:24 read [3] - 5:12, 22:13, 29:14 reading [1] - 23:22 ready [1] - 29:14 real [1] - 44:1 really [12] - 4:14, 8:17, 18:12, 18:15, 21:24, 23:1, 24:4, 27:24, 30:5, 31:5, 41:9, 44:1 reason [5] - 8:3, 10:13, 14:8, 24:15, 43:25 reasonably [1] - 13:4 REATH [1] - 1:17 received [2] - 4:6, 5:2 receiving [1] - 26:17 recent [1] - 14:25 recently [2] - 7:13, 8:24 reconciliation [1] - 40:22 record [2] - 16:2, 30:24 recovery [1] - 42:13 REES [1] - 2:10 regard [9] - 4:9, 4:10, 4:19, 6:3, 8:10, 36:16, 36:21, 38:6, 41:19 regardless [1] - 25:24 regular [1] - 17:20</p>	<p>REPORTER [2] - 1:25, 3:15 Reporter [2] - 45:6 reporting [2] - 25:18, 26:2 reports [2] - 27:9, 32:24 represent [2] - 17:11, 33:16 representation [2] - 12:23, 13:11 representations [2] - 32:2, 32:8 representative [3] - 12:20, 14:18, 25:6 representing [1] - 15:12 request [1] - 4:20 require [1] - 30:3 required [1] - 20:9 reserving [1] - 34:22 reside [1] - 39:24 resolve [1] - 44:1 resolved [3] - 10:21, 36:4, 41:25 resolving [1] - 42:2 respect [2] - 6:20, 12:14 respond [4] - 13:10, 17:2, 30:16, 30:17 response [4] - 7:2, 7:3, 7:4, 7:7 rest [2] - 30:11, 41:8 result [3] - 11:7, 17:8,</p>	<p>S</p> <p>S/Vincent [2] - 3:14, 45:22 SALES [1] - 1:5 sample [14] - 19:24, 20:6, 20:8, 20:20, 20:23, 21:1, 21:6, 22:7, 22:8, 22:17, 22:21, 23:9, 23:25 samples [44] - 4:11, 4:14, 4:21, 5:22, 6:3, 6:6, 6:10, 6:12, 6:14, 6:17, 6:18, 6:22, 7:12, 7:16, 7:18, 7:19, 7:20, 8:4, 8:6, 8:23, 9:6, 10:8, 12:1, 12:12, 12:15, 14:7, 14:17, 14:18, 15:10, 15:17, 15:20, 15:23, 16:7, 16:25, 17:13, 17:18, 18:2, 18:22, 21:22, 24:11, 24:16, 25:4, 25:13, 41:19 sampling [3] - 15:3, 19:4, 43:22 Saturday [1] - 42:9 schedule [5] - 5:11, 30:20, 34:14, 35:20, 42:21 scheduling [3] - 4:14, 35:14, 35:15 science [1] - 14:6</p>
			<p>September [6] - 12:12, 25:11, 25:15, 43:10, 43:12, 44:4 serve [1] - 32:24 served [1] - 35:3 server [1] - 35:7 service [4] - 35:6, 35:8, 35:15 set [1] - 45:10 SEYFARRTH [1] - 2:4 sharko [1] - 19:8 Sharko [9] - 8:15, 9:22, 26:13, 26:21, 28:1, 28:18, 32:15, 35:12, 35:18 SHARKO [29] - 1:18, 8:17, 8:21, 10:6, 10:20, 16:15, 16:18, 16:23, 19:5, 19:10, 26:16, 26:24, 27:2, 27:5, 27:10, 27:22, 27:25, 28:5, 28:13, 29:3, 29:8, 29:12, 30:7, 32:16, 34:6, 35:13, 42:23, 43:7, 43:14 SHAW [1] - 2:4 shed [1] - 37:5 short [7] - 34:5, 39:17, 40:2, 40:12, 40:16, 40:22, 41:2 side [2] - 34:11, 41:20 sides [1] - 16:12</p>

significantly [1] - 9:17	45:9	tested [1] - 22:21	42:7
silver [1] - 41:14	steps [6] - 21:19, 21:20, 21:23, 22:22, 23:1, 23:19	testify [2] - 4:20, 11:25	together [5] - 4:14, 7:8, 32:21, 38:18, 40:24
SILVER [18] - 2:9, 13:11, 14:2, 14:5, 15:15, 16:1, 16:6, 16:20, 26:22, 27:13, 27:16, 37:5, 37:11, 37:14, 37:16, 37:21, 37:25, 41:15	still [5] - 24:21, 30:13, 35:1, 37:12, 40:17	testimony [2] - 5:18, 5:19	took [1] - 35:7
Silver [4] - 12:4, 13:9, 26:20, 39:21	stop [1] - 5:23	testing [14] - 4:15, 5:7, 5:10, 19:4, 19:14, 20:17, 25:6, 25:15, 25:17, 25:20, 26:2, 31:15, 31:17, 31:22	total [2] - 6:16, 24:12
simple [1] - 10:15	stragglers [1] - 26:1	Thanksgiving [1] - 27:17	toxicologist [1] - 31:20
simply [1] - 34:21	STREET [1] - 1:8	THE [12] - 1:1, 1:10, 2:14, 3:7, 3:9, 4:3, 6:23, 16:24, 29:20, 30:9, 38:1, 44:9	toxicologists [1] - 31:11
situations [1] - 9:24	stricken [1] - 39:5	themselves [1] - 31:23	transcript [1] - 45:8
SKADDEN [1] - 1:19	subject [1] - 40:1	theory [2] - 37:10, 37:24	TRANSCRIPT [2] - 1:4, 3:8
SLATE [1] - 1:19	submission [2] - 18:15, 30:16	therefore [1] - 40:2	TRANSCRIPTION [1] - 3:9
slows [2] - 21:24, 21:25	submissions [2] - 4:6, 5:13	thinking [2] - 30:25, 33:25	transferred [2] - 39:23, 40:15
so-and-so [1] - 22:14	submit [1] - 17:5	third [2] - 34:25, 40:20	Transmission [1] - 19:22
solely [1] - 8:9	submitted [1] - 37:16	third-party [1] - 34:25	TRENTON [1] - 1:8
someone [2] - 10:16, 36:23	sufficient [2] - 10:15, 34:9	THOMAS [1] - 2:5	trial [4] - 11:9, 13:2, 42:25, 43:6
soon [1] - 32:23	suggest [2] - 26:24, 33:6	THORNTON [1] - 2:10	trials [2] - 33:20, 34:8
sorry [1] - 38:2	suggestion [1] - 27:14	thorough [1] - 16:21	true [2] - 33:7, 45:8
sort [1] - 38:14	summer [3] - 16:16, 43:1, 44:8	three [8] - 6:17, 10:24, 11:3, 14:25, 15:24, 16:18, 18:7, 27:18	trust [1] - 24:18
sounds [1] - 23:25	Sunday [1] - 25:16	Thursday [5] - 30:17, 41:18, 43:18	try [4] - 16:18, 39:14, 42:4, 43:11
sources [1] - 15:10	supplemental [5] - 7:10, 7:11, 10:10, 37:7, 37:19	ties [1] - 4:14	trying [5] - 12:11, 12:19, 18:4, 22:25, 41:22
specific [1] - 23:19	surgeon's [1] - 42:10	time-consuming [1] - 24:9	tube [2] - 22:18, 22:20
speedy [1] - 42:13	surgery [1] - 42:10	timeframe [2] - 7:17, 9:17	turn [1] - 19:13
spoliation [3] - 4:24, 14:9, 14:12	SUSAN [1] - 1:18	timeframes [2] - 6:15, 12:21	two [11] - 6:18, 7:18, 11:4, 12:9, 15:7, 15:21, 16:17, 29:3, 29:6, 33:4, 42:25
spreadsheet [2] - 7:8, 8:22	T	timing [5] - 5:10, 6:2, 19:13, 20:17, 25:18	two-week [1] - 42:25
spreadsheets [1] - 7:8	Talc [1] - 2:11	TISI [19] - 1:15, 5:17, 6:9, 6:12, 6:25, 7:3, 7:7, 8:11, 9:11, 9:14, 11:4, 11:13, 17:23, 18:1, 18:16, 18:24, 19:1, 35:3, 35:17	two-year [1] - 15:21
staff [1] - 34:8	talc [2] - 11:2, 22:17	Tisi [4] - 5:7, 8:25, 10:7, 10:23	typical [1] - 20:3
stages [4] - 21:12, 21:16, 23:18	tall [1] - 31:2	Tisi's [1] - 13:11	typically [1] - 20:3
start [6] - 5:3, 18:11, 18:23, 25:25, 34:17, 43:4	task [1] - 31:2	tissues [1] - 41:12	U
started [1] - 16:2	technician [1] - 20:2	TITLE [1] - 3:7	U.S [2] - 1:25, 3:15
state [3] - 40:9, 41:10, 41:20	technicians [2] - 21:21, 22:4	TO [2] - 3:7, 3:8	U.S.C [1] - 3:7
State [1] - 45:7	TEM [12] - 19:23, 20:4, 20:24, 21:8, 21:20, 21:23, 22:21, 23:2, 23:10, 23:23, 23:25, 31:23	today [7] - 4:12, 8:20, 14:6, 19:8, 36:22, 41:13,	ultimately [1] - 22:21
STATE [1] - 1:8	temp [1] - 22:14		under [17] - 8:5, 10:3, 10:11, 10:14, 10:15, 11:8, 11:9, 11:14, 11:19, 12:5, 12:25, 13:1, 13:2, 15:8, 15:13, 17:11, 37:3
statement [1] - 10:11	ten [1] - 8:25		under-oath [1] - 10:3
States [1] - 45:5	terms [5] - 12:20, 12:21, 20:13, 31:9, 39:13		unfortunately [1] - 42:9
STATES [2] - 1:1, 1:8	Tersigni [2] - 36:9, 38:16		unique [1] - 42:3
status [4] - 6:1, 36:7, 37:1, 41:9	TERSIGNI [6] - 1:18, 36:10, 36:14, 38:17, 39:2, 39:7		UNITED [2] - 1:1, 1:8
STATUS [1] - 1:5	test [1] - 7:20		United [1] - 45:5
Steering [1] - 1:16			universe [2] - 14:17, 15:1
STENOGRAPHIC [1] - 3:9			unless [2] - 13:6, 26:7
stenographically [1] -			

up [15] - 5:6, 5:7, 8:5, 11:22, 13:19, 14:3, 15:11, 16:24, 17:9, 17:21, 18:21, 25:3, 27:20, 29:17, 36:17 USDJ [1] - 1:10 useful [1] - 18:13 uses [2] - 14:6, 23:11	24:18, 25:21, 26:12, 26:17, 26:23, 27:1, 27:4, 27:6, 27:15, 27:20, 27:23, 28:1, 28:6, 28:10, 28:18, 28:23, 29:5, 29:10, 29:13, 30:21, 31:3, 31:12, 31:24, 32:9, 33:9, 34:12, 34:25, 35:11, 35:22, 36:12, 36:15, 36:20, 37:1, 37:9, 37:12, 37:15, 37:20, 37:23, 38:3, 38:5, 38:16, 38:25, 39:3, 39:8, 39:15, 41:5, 41:8, 42:12, 42:15, 42:17, 42:20, 42:24, 43:9, 43:16, 43:20 women [3] - 9:8, 9:14, 9:15 words [1] - 14:6 workload [1] - 13:15 works [1] - 27:24 writing [1] - 41:17 written [3] - 6:23, 17:5, 24:3
wants [2] - 13:9, 28:1 warning [1] - 38:21 washing [1] - 23:11 WASHINGTON [2] - 1:20, 2:5 WEDINGER [1] - 2:6 Wednesday [3] - 41:17, 43:13, 43:17 week [10] - 8:25, 18:22, 26:2, 27:19, 29:7, 29:21, 38:1, 41:24, 42:24, 42:25 weeks [4] - 16:16, 16:17, 29:3, 29:6 weighed [1] - 22:8 willing [1] - 11:24 witness [5] - 4:20, 8:5, 10:17, 11:15, 35:6 witnesses [3] - 29:24, 30:4, 35:1 WOLFSON [96] - 1:10, 4:4, 5:8, 5:23, 6:10, 7:1, 7:5, 8:9, 8:13, 8:19, 9:9, 9:12, 9:19, 10:12, 10:21, 11:11, 13:9, 13:20, 14:4, 14:11, 15:16, 16:4, 16:11, 16:17, 17:25, 18:14, 18:20, 18:25, 19:2, 19:7, 19:11, 19:18, 20:14, 20:19, 20:25, 21:17, 21:25, 22:24, 23:6, 23:22, 24:14,	Y year [2] - 12:14, 15:21 years [3] - 9:10, 9:16, 15:24